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June 4, 2020

VIA ECF

Honorable Margo K. Brodie
United States District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: *Federal Defenders of New York, Inc. v. Federal Bureau of Prisons, et al.*, No. 19-cv-00660 (E.D.N.Y.)

Dear Judge Brodie:

I write to update the Court on the parties' ongoing efforts to address several of the important issues raised in this litigation through mediation.

I. Background

Since my May 28, 2020 report to the Court, I have corresponded with the parties via email.

This week, my conversations with the Federal Defenders and the Government have focused on the following topics:

1. Plaintiffs' desire to increase both the length and number of available videoconferences currently available at both institutions.
2. Defendants' proposal for increasing the length and number of available videoconferences currently available at both institutions.
3. The execution of the current protocol for scheduling and placing attorney-client phone calls at the MDC and the MCC.

II. Telephonic Contact

This was the seventh week in which the parties scheduled and facilitated legal phone calls under the Court Protocol for Attorney Calls and Teleconference Hearings. Pursuant to the Protocol, attorney-client calls were scheduled by Federal Defenders for afternoon slots of one-half hour each from 12pm to 3pm at the MDC and 1 to 3:30 pm at the MCC.

A. MCC

According to the information I have from MCC and Federal Defenders, MCC received 135 requests for phone calls since May 29, 2020. Each of these calls was either completed, attempted, or cancelled at the attorney's request. Once again this week, I received information from Federal Defenders raising concerns about inmate privacy during a legal call at MCC, this time about a call in the SHU. The MCC has been made aware of this issue.

B. MDC

According to the information I have from the Federal Defenders, MDC received 152 call requests since May 29, 2020. We are still reviewing completion data from MDC for these calls. However, I note that Federal Defenders once again raised a concern about inmate privacy during an MDC legal call. Federal Defenders report that an inmate in SHU was required to take his legal call within his SHU cell with a cellmate present. MDC has been made aware of this allegation.

III. Videoconferencing

A. MCC

According to both Federal Defenders and MCC's records, there were sixteen videoconferences scheduled to take place this week. Sixteen were completed as scheduled.

B. MDC

According to Federal Defenders' records, the organization scheduled eight videoconferences at MDC this week. Seven were completed. One did not take place, although the attorney reported attempting to begin the call as scheduled. Additionally,

Federal Defenders reported several technical difficulties that interfered with the quality of the videoconferences, including one technical issue that raised a privacy concern.

MDC also scheduled two videoconferences this week using the courthouse video system. Both scheduled videoconferences occurred. A third videoconference could not be scheduled because of a conflict with two court proceedings and the attorney's schedule. That videoconference has been scheduled for next week.

C. Proposals for Expanded VTC Access

In their report filed last week Federal Defenders requested access increase to ten VTCs per day for each institution and requested the Government commit to work on a plan and schedule to achieve that goal. ECF No. 64 at p. 2; *see also* May 29, 2020 Status Conference Tr. 16:5-12. During the Status Conference the Government agreed to increase video access and indicated it had begun to work on an interim plan. May 29, 2020 Status Conference Tr. 8:10-18.

During the Status Conference Plaintiffs requested the Government further expand videoconferencing access to conform to the same schedule as in person visitation prior to the COVID-19 crisis. May 29, 2020 Status Conference Tr. 12:21-25.

This week, both institutions put forward proposals to expand videoconferencing access pursuant to Plaintiffs' original request. The proposals were provided to Plaintiffs and the mediation team this week, and are described as increasing videoconferencing capacity by 60 to 69%.

The MDC committed to evaluating the implementation of the expanded hours after two weeks. The MDC has further committed to working with Federal Defenders and the Mediator to determine how to further increase videoconferences in the event circumstances warrant. Should that occur, MDC has agreed to submit a new proposal. Since the release of the VTC proposal, Federal Defenders have maintained that the plan fails to provide meaningful continuous access as required by the Sixth Amendment and BOP's own regulations.

I have asked both institutions to review prior data concerning the volume of in person visitation to see if there are useful comparisons to guide discussions. I will continue discussions with the parties on this issue.

Respectfully,

/s/ Loretta E. Lynch
Loretta E. Lynch

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